

Application No.: 10/763,870
Amendment Dated: November 7, 2007
Reply to Office Action Dated: August 7, 2007

REMARKS/ARGUMENTS

Claims 1-3, 5-10, 12-14 and 17-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Takashima (U.S. Patent No. 5,535,765). Such rejection is respectfully traversed.

In a statement bridging pages 2 and 3 of the aforementioned Office Action, the Examiner sets forth her reasoning behind Takashima's alleged anticipation of Applicant's claims 1, 6, 8 and 9. As part of that statement, the Examiner asserts (with emphasis added):

With regard to claims 1, 6, 8-9, Takashima discloses a hair holding device (figs. 14-15) comprising a first body member (40a), a second body member (40b), the first and second body members having gripping portions (see attachment A), a hinge means (16) for pivotally connecting the first and second body members and an elastomeric means comprising at least one continuous elastomeric band (50) contacting the first and second body members in a looped configuration (fig. 15), the elastomeric means in contact with the first and second body members for biasing the first and second body members into a closed position (col. 9, lines 62-65).

The statement at column 9, lines 62-65 of Takashima to which the Examiner refers is reproduced below, with emphasis added.

Next, the manual force applied to the support members 200a and 200b is relaxed whereby the frames 100a and 100b begin to close the distal ends under the elastic restoring forces of the leaf spring 301 and elastic band 50.

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Applicant respectfully objects to the Examiner's application of that statement for at least two reasons.

First, in the context of the Takashima patent, it is not used to describe the embodiment of the Takashima device shown in FIGS. 14 and 15. Rather, it is used to describe the embodiment of the Takashima apparatus shown in FIGS. 19-25.

Second, and more importantly, it is an incorrect statement, not only with respect to the specific embodiment of the Takashima device shown in FIGS. 19-25 but as to all embodiments of the invention described in that patent.

FIGS. 19-25 of Takashima depict a so-called "Fifth Embodiment" of the Takashima hair binder device. The written description of the "Fifth Embodiment" spans column 8, line 34-column 10, line 51. This is the only portion of the Takashima patent in which "elastic restoring forces" for closing the pivoted hair band holding frames are discussed. And, in that portion of the patent, the restoring forces are mentioned three times. In two of those citations, i.e., column 9, lines 24-33 and column 10, lines 24-35, only leaf spring 301 is described as providing the "elastic restoring force" for closing the device. There is good reason why these passages do not include the elastomeric hair holding band 50 as providing "elastic restoring force": it is because it does not provide such force, column 9, lines 62-65 notwithstanding.

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In all embodiments of the Takashima apparatus, the hair binding elastic band 50 is in tension before, during and after it binds a shock of hair (identified as long hair "LH" in the Takashima drawing figures). An elastic band in tension, like a tension spring in tension, seeks to reach a lower energy level. That is, it seeks to contract when stretched. For an elastic band stretched about the pivot axes 16 (FIGS 2-5 and 13-16), pivot axes 300 (FIGS. 19-26) and engaging pins 21 (FIGS. 6-12) of Takashima, that contraction can only occur about the pivot axis or pivot pin, as the case may be, with the pivot axis or pivot pin serving as the fulcrum for the contraction. Under these circumstances, therefore, the stretched elastic band tends to pull the variously disclosed frame members open rather than push them closed.

To confirm this fact, the undersigned fashioned a model of a pivoted frame assembly analogous to several of the pivoted frame assemblies shown in the Takashima patent from a hinge in response to a similar rejection of Applicant's claims raised in an Office Action dated January 11, 2005.¹ At their distal ends, the arms of the hinge were bent inwardly toward one another to simulate the first elastic band engaging structures shown in Takashima that engage the opposite ends of an elastic band to be placed about a user's hair. Consistent with the first elastic band engaging structures shown in Takashima, the inwardly bent

¹ The undersigned has since misplaced that assembly. However, all of the statements made herein in connection with that assembly remain true and are (other than certain expressions of verbal tense) exact reproductions of statements made by the undersigned in a February 16, 2005 Request for Reconsideration offered in reply to the January 11, 2005 Office Action concerning Takashima.

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ends of the hinge arms in the model were essentially in alignment with the pivot axis of the hinge when the hinge arms were in a "closed" position. To test the theory at issue, the undersigned placed one end of a rubber band on one of the inwardly bent rubber band engaging structures formed into one of the hinge arms, stretched the band around the hinge axis and seated the opposite end of the rubber band on the other inwardly bent rubber band engaging structure formed into the other of the hinge arms. During this rubber band placement process, it was necessary for the undersigned to squeeze the hinge arms together to maintain the hinge arms in their "closed" position. This led the undersigned to conclude that the arms would be pivoted from a closed to an open position due to the contraction of the rubber band upon removal of the manually applied closing force. Indeed, the undersigned avers that that is precisely what happened when the manual closing force was removed from the hinge arms. If need be, the undersigned is willing to introduce into the record a declaration executed by him attesting to the facts of that experiment.

In addition, Applicant recently had fabricated a model device which is highly similar in construction to the circular, ring-like, hinged, two-part hair clip shown in FIGS. 2-6, 9-13 and 15-18 of Takashima. In Applicant's model device, a rubber band is wrapped around the hinge axis of the device and opposite ends of the rubber band are received in engaging structures formed at the distal ends of the hinged arms. Attached hereto as Exhibit A are a series of photographs of that device which show,

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in sequence, (1) the hinged, two-part ring and elastic rubber band as separate components (Sheet 1 of 5), (2) the band mounted on the ring with the ring fully closed (Sheet 2 of 5), (3) the band mounted on the ring with ring partially open (Sheet 3 of 5), (4) the band mounted on the ring with the ring more open (Sheet 4 of 5), and (5) the band mounted on the ring with the ring fully open to the point the band is in a completely relaxed state (Sheet 5 of 5).

As seen in those photographs, Applicant's device performs exactly the same as the device made by the undersigned and described above. That is, Applicant's model device requires one to forcibly hold the opposed pivoted ring members in a "closed" condition in opposition to the tensile force of the elastic band extended about the device's pivot axis. As "closing" or squeezing force is gradually decreased, the tension of the band causes the pivoted ring members to open. Applicant is willing to introduce into the record a declaration executed by him attesting to the facts regarding operation of his device. Still further, the undersigned and Applicant would be willing to meet personally with the Examiner to demonstrate Applicant's device. However, the time and travel costs associated with such a brief demonstration (it would literally be completed in a matter of seconds) would be quite substantial and Applicant would prefer not to incur them if not absolutely necessary.

Recognizing that the passage at column 9, lines 62-65 is clearly erroneous in light of the foregoing evidence, at least

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as to the elastic band 50, the Takashima patent is otherwise silent with regard to the elastomeric means specifically called for in Applicant's independent claim 1 and its method counterpart, independent claim 20, namely,

elastomeric means in contact with said first and second body members for biasing said first and second body members into a closed position and for conforming to gathered strands of a user's hair when said hair gripping portions come into contact with gathered strands of a user's hair.

In point of fact, as revealed in the experiments conducted by Applicant and the undersigned, the pivoted frame members of a device constructed analogously to those shown in the Takashima patent will be pulled apart rather than pushed together under the influence of an elastic band in tension wrapped about their common pivot axis. This is in diametric conflict with the effect achieved by the elastomeric means set forth in Applicant's independent claims 1 and 20.

Thus, the elastic band in Takashima operates at cross-purposes against any spring that might be present whose specific function it is to close the device. Hence, the very presence of the elastic band requires a stronger spring than otherwise would be necessary if the band were not present. By contrast, the presently claimed invention makes possible the use of a weaker spring than would otherwise be necessary because of the presence of the elastomeric means which bias the first and second body members into a closed position.

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Further, The Takashima device does not secure hair when open; it only serves to secure hair when the device is closed. In contrast, the present invention secures hair even when partially closed.

In addition, once hair is placed into the Takashima device, one must squeeze the device into a closed position. The v-shaped configuration of the Takashima elastomeric band will always stop the device from closing completely, unless squeezed shut by hand. And, unless the device closes completely, it will be useless and fall out of the hair. This is a major drawback. In stark contrast, the presently claimed hair holding device and method result in a device which is automatically closed when released. This makes the present invention easier to use than, say, barrettes. Jaw clips are popular because they can be easily adjusted in the hair without fuss and muss. No other type of hair device, including Takashima, has this advantage.

Finally, the sudden transfer of the elastic hair band to the hair in the Takashima device is not predictable or reliable. That is, a problem results from the timing of the hook's closing and the band's intended sliding off of the axle or hinge pin and engagement of a shock of hair. If the band slides from axle before the device's hook engages the band, then at least some hair will be pushed out of the band and the hook will not fully enclose all of the hair.

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Accordingly, Applicant submits that the outstanding Section 102(b) rejection of independent apparatus claim 1, its dependent claims 2, 3, 5-10, 12-14 and 17-19, and independent method claim 20 is improper and should be withdrawn.

Claims 15 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Takashima in view of Mooneyhan (U.S. Patent No. 4,554,934). Such rejection is respectfully traversed.

Applicant does not dispute that the Mooneyhan patent discloses a hair holding device whose first and second body members have squeezable handle portions for opening the device. These are common and well known features in hair holding apparatus. Nevertheless, Mooneyhan fails to overcome the many serious deficiencies of the Takashima patent in relation to Applicant's independent claims 1 and 20 discussed at length hereinabove. Therefore, since no combination of the teachings of Takashima and Mooneyhan can produce the invention recited in Applicant's independent claim 1, those references likewise cannot be combined to produce the invention called for in dependent claims 15 and 16. Consequently, Applicant submits that the outstanding Section 103(a) rejection of claims 15 and 16 is improper and should be withdrawn.

Claims 4, 7 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Takashima. Such rejection is respectfully traversed.

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Since it has been clearly shown herein that Takashima does not in fact disclose the invention defined in independent claim 1 -- and, in fact, leads one directly away therefrom -- Takashima does not and cannot disclose or suggest the invention prescribed in dependent claims 4, 7 and 11.

Accordingly, Applicant submits that the outstanding Section 103(a) rejection of independent claims 4, 7 and 11 is improper and should be withdrawn.

In view of the foregoing, the instant application is believed to be in condition for allowance and, therefore, early issuance thereof is earnestly solicited.

If the Examiner believes that a telephone interview would be beneficial to advance prosecution of the present application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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